

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 866 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

DAFER GAFAR SULEMAN

Versus

STATE OF GUJARAT

Appearance:

Mr.Pravin S.Gondalia for MR YS LAKHANI for Petitioner
Ms.S.S.Talati, A.G.P. for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India the prayer in the nature of certiorari is for quashing show cause notice, order of externing Authority and the order of the Appellate Authority contained in Annexures : A, B & C of the writ petition.

2. Brief facts are that show cause notice (Annexure : A) was issued by the Externig Authority to the petitioner to show cause why, in view of five criminal cases one under Indian Penal Code and four under the Prohibition Act and other serious anti-social and criminal activities, order for externment be not passed against him. The petitioner appeared, submitted reply to the show cause notice. After considering the evidence and submissions of the petitioner the Externig Authority vide order contained in Annexure : B directed and ordered externment of the petitioner from four districts, viz. Jamnagar, Rajkot, Kutch and Junagadh for a period of two years. The petitioner preferred an Appeal which was dismissed by the Appellate authority on 29.8.1998 vide Annexure : C. It is, therefore, this writ petition seeking quashing of the aforesaid order and the show cause notice.

3. Learned Counsel for the petitioner and the learned A.G.P. have been heard.

4. Learned Counsel for the petitioner has challenged the impugned orders of the Externig Authority as well as the Appellate Authority on several grounds. The first is that the orders are specimen of non-application of mind, the second is that the date time and place so also the area of operation of the petitioner is not disclosed in the show cause notice which has rendered the show cause notice vague and has consequently rendered the impugned orders invalid inasmuch as the petitioner was prevented from furnishing effective reply to the show cause notice. Another attack has been that the Externig Authority was influenced by confidential statement of six witnesses, but there is no mention in the show cause notice that the six witnesses gave statements against the petitioner nor the extract of such statements were disclosed which has also prevented the petitioner from submitting effective reply to the show cause notice. Another contention is that no reason has been given for externing the petitioner from four districts whereas he is residing in a village Dhrol in Jamnagar District. The last attack has been that the Externig Authority as well as the Appellate Authority have not considered why lesser remedy of calling upon the petitioner to furnish personal and surety bonds would not have served the purpose.

4. Coming to the last contention, I do not find any substance that merely because the Externig Authority as well as the Appellate Authority failed to consider less drastic remedy of insisting upon the petitioner to file

personal and surety bonds it has rendered the impugned orders invalid. There is no prohibition or bar in any law preventing the Externing Authority from passing order of externment without considering lesser drastic remedy. The Externing Authority, if satisfied, could have passed the order of externment.

5. The next attack that no reason has been given in the impugned order why the petitioner has been externed from four districts has also no substance. In the show cause notice (Annexure : A) itself it has been mentioned as under :

"And due to your fear the witnesses for the safety of their lives and properties are not willing to depose against you in open and if you are externed only from Jamnagar district then in this advance age there is possibility that you will continue your activities by living or by coming the nearby Districts. Therefore, it is decided that you are externed from the limits of Jamnagar, Rajkot, Junagadh and Kachha District for two years."

The above recital in the show cause notice clearly shows the reason why the Externing Authority decided to pass order for externing the petitioner from four adjoining districts. In the Judgment also the Externing Authority has made identical observation and as such it cannot be said that no reason has been given by the Externing Authority for externing the petitioner from four districts. On this ground also the impugned order cannot be quashed.

6. There is, however, force and merit in the contention that the notice suffers from vagueness. Number of activities, anti-social and criminal, against the petitioner have been disclosed in the show cause notice, but the date, time, place and area of operation of the petitioner has not been disclosed in the show cause notice. On identical facts where the period of nefarious activity and area of location was not disclosed in the show cause notice a Division Bench of this Court in Rajput Ranjitsing Jatubha v/s. Vinay Vyas, reported in XXVII(1) 1986(1) G.L.R. 478 held that such notice suffers from vagueness which has the effect of depriving the petitioner from furnishing effective reply to the show cause notice and also has the effect of snatching away reasonable opportunity of defence from the petitioner. It was further held that not only on account of such vagueness that the notice becomes invalid, but if

the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. This observation applies with all force to the recitals contained in the notice Annexure : A in this writ petition. Consequently the notice is vague which prevented the petitioner from presenting effective and proper reply to the show cause notice and such fatal defect has rendered the entire proceedings illegal. As a consequence thereof the order of Externig Authority and the Appellate Authority passed in such proceedings would also be rendered illegal and invalid. This ground alone is sufficient for quashing the two impugned orders.

7. Another attack has been that the show cause notice was issued in a mechanical manner and the order of Externig Authority was also passed in mechanical manner which in a mechanical manner was confirmed by the Appellate Authority. It was argued that there is no allegation against the petitioner of committing offences punishable under Chapters : XVI and XVII of the Indian Penal Code and routine recital has been made in the show cause notice as well as in the order of Externig Authority that the petitioner had committed offences punishable under Chapter : XVI and XVII of the I.P.Code. Five cases are mentioned in the show cause notice, out of which four cases are under Bombay Prohibition Act. These cases cannot be said to be punishable under Chapter : XVI or XVII of the I.P.Code. Then remains only one case under Chapter : XVI and this is not punishable under Chapter : XVII of the I.P.Code. Offences punishable under Section 323 and 326 of the I.P.Code are punishable under Chapter : XVI only. Thus, mechanical recital of commission of offences under Chapter : XVI and XVII of the I.P.Code has rendered the impugned order of the Externig Authority invalid.

8. It may be mentioned that in the show cause notice as well as in the order of Externig Authority there is allegation that the petitioner is engaged in committing anti-social activities like murder, loot, robbery and burglary, etc. It is really difficult to appreciate the working of the mind of the Externig Authority that even in murder case no F.I.R. would have been lodged and nobody would have been willing to give evidence in such a heinous offence against the petitioner. A case of murder could not have gone unnoticed by the police. Consequently it can be said that vague allegations and disclosures have been made in the show cause notice so as to give impression that the petitioner has committed offences punishable under Chapter : XVII I.P.C.

9. Non-application of mind of the Externig Authority is exhibited from one of the paras in his order where he has mentioned that earlier offences have been registered and proved against the aforesaid person. The fact is that all the five cases mentioned in the show cause notice are still pending and this fact has been admitted and disclosed by the Externig Authority in subsequent portion of his Judgment. Thus, contradictory disclosure on this aspect also renders the order of the Externig Authority invalid inasmuch as it apparently discloses non-application of mind to the material placed before him.

10. The Externig Authority was influenced by the statements of six confidential witnesses, but the gist of their statements was not disclosed in the show cause notice nor it has been disclosed in the impugned order. This is also a defect which indicates non-application of mind and pre-determination by the Externig Authority.

11. The Externig Authority travelled beyond the show cause notice when it observed in its order that the petitioner committed another offence Crime No.49 of 1997 under different provisions of the Indian penal Code. This crime number has not been disclosed in the show cause notice. Even in the Judgment the Externig Authrity has not mentioned the sections of the Indian Penal Code under which Crime No.49/97 was committed. Vague disclosure was made that this was an offence under different provisions of the Indian Penal Code. The petitioner was not afforded any opportunity in the show cause notice to deal with about this crime No.49/97. Thus, where on the one hand the mind of the Externig Authority was influenced by another case inasmuch as he observed that thus within a period of three years two offences punishable under the provisions of the Indian Penal Code have been registered against the petitioner, the petitioner was also deprived of opportunity to meet against this belated allegation quoted in the Judgment of the Externig Authority. If the mind of the Externig authority was influenced from extraneous factor about which the petitioner was not given an opportunity to meet, it will render the entire order invalid as well as illegal.

12. So far as the order of the Appellate Authority is concerned it also suffers from the vice of non-application of mind. As many as seven grounds were taken before the Appellate Authority by the petitioner in assailing the order of Externig Authority but all these

grounds, except one, were not considered. The order of the Appellate Authority is almost subjective in nature. The appellate Authority was exercising quasi judicial function and it was obliged to exhibit some objectivity in its order. The conclusion of the Appellate Authority is as under :

"Looking to the copies of F.I.R. which have come along with original papers of this case and looking to the confidential statements of these witnesses it appears that the appellant is doing the activities as alleged. "

Thereafter the Appellate Authority dismissed the Appeal. From the above quoted observations from the Judgment of the Appellate Authority it is evident that the order of the Appellate Authority suffers from subjectivity and lacks objectivity.

13. Further, the Appellate Authority made observation that no specific place or time is given regarding the allegations shown in the show cause notice. Still in the findings the Appellate Authority did not hold the notice to be vague. All these show that the order of the Appellate Authority was mechanical in nature and lacks objectivity which is expected from a quasi-judicial authority. As such this order too cannot be sustained.

14. The show cause notice having exhausted cannot be quashed. The order of Externing Authority as well as of the Appellate Authority (Annexures : B & C) for the reasons stated above, cannot be sustained. They have therefore to be quashed.

15. The writ petition, therefore, succeeds and is hereby allowed. The order of the Externing Authority (Annexure : A) dated 30.6.1998 and the order of Appellate Authority (Annexure : B) dated 29.8.1998 are hereby quashed.

sd/-

(D. C. Srivastava,J.)

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